



Signed and Filed: December 28, 2012

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
CARL ALEXANDER WESCOTT and) No. 12-30143DM
MONETTE ROSEMARIE STEPHENS,) Chapter 7
Debtors.)
JANINA M. HOSKINS, TRUSTE IN) Adversary Proceeding
BANKRUPTCY OF THE ESTATE OF) No. 12-3148DM
CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,)
Plaintiff,)
v.)
CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,)
Defendants.)

SCHEDULING ORDER FOR:

- ☒ TRIAL IN ADVERSARY PROCEEDING
☐ FINAL HEARING ON MOTION FOR RELIEF FROM STAY
☐ TRIAL ON OBJECTIONS TO CLAIM
☐ HEARING ON OBJECTIONS TO CONFIRMATION OF CHAPTER ____ PLAN
☐ OTHER:

Trial Scheduling Order
Revised July, 2011

- 1 ☒ A Status Conference in this adversary proceeding
2 ☐ A preliminary hearing on this motion for relief from stay
3 ☐ A hearing regarding objections to claim
4 ☐ A prehearing conference regarding objections to
5 confirmation of plan
6 ☐ Other: _____

7 was held on December 28, 2012.

8 Appearances were as follows:

9 ☒ For plaintiff Janina M. Hoskins, Trustee in Bankruptcy of
10 the Estate of Carl Alexander Wescott and Monette Rosemarie
11 Stephens ("Plaintiff"),

12 Jean Barnier, Esq. _____ ;

13 ☒ For defendant Carl Alexander Wescott ("Defendant"),

14 Howard L. Hibbard, Esq. _____ ;

15 ☒ For defendant Monette Rosemarie Stephens ("Defendant"),

16 Sheila Gropper Nelson, Esq. _____ ;

17 ☐ For Debtor(s): _____ ;

18 ☐ For Moving Party: _____

19 _____ ;

20 ☐ For Trustee: _____ ;

21 ☐ For Creditor: _____ ("Creditor"),

22 _____ ;

23 ☐ For United States Trustee: _____ ;

24 ☐ Other(s): _____

25 _____ .

26 Upon due consideration, the court hereby enters the following
scheduling order.

TRIAL. The trial or hearing ("Trial") on the above matter(s)
will commence on the Date and Time of Trial, set forth below, at

Trial Scheduling Order
Revised July, 2011

1 the United States Bankruptcy Court, 235 Pine Street, Twenty-Second
2 Floor, San Francisco, CA 94104. The Time Reserved for Trial is
3 also shown below. During the week prior to the Trial, the court
4 may move the starting time or day. The court's Calendar
5 Clerk/Courtroom Deputy will advise the parties of any such change
6 by telephone. **All parties are cautioned to be prepared to adjust**
7 **their schedules accordingly.**

8 **MOTIONS.** Unless otherwise ordered, (a) motions to join other
9 parties and to amend the pleadings must be filed not later than **30**
10 days after entry of this scheduling order and (b) motions for
11 summary judgment must be heard no later than **30** calendar days
12 before the Date and Time of Trial.

13 **DISCOVERY.** Discovery shall be completed by the Discovery
14 Deadline shown below. Completion means that depositions must be
15 concluded, although not necessarily transcribed. As to written
16 and production discovery, responses must be due before the
17 Discovery Deadline. The court will attempt to resolve all
18 discovery disputes on an expedited basis via telephonic
19 conference, which any party may initiate by request to the court's
20 Calendar Clerk/Courtroom Deputy and notice to the other party
21 after they have met and conferred and made a good faith effort to
22 resolve the dispute. The party requesting the conference should
23 submit a brief letter explaining the issues to be presented.

24 The Discovery Deadline may be extended by the parties by
25 agreement, without an order of the court.

26 **EVIDENCE.** On motions for relief from stay, testimonial

Trial Scheduling Order
Revised July, 2011

1 evidence at the Trial must be presented by written declaration(s)
2 or deposition excerpt(s), unless the court by order allows oral
3 testimony. B.L.R. 4001-1(e). Any motion for permission to
4 introduce any oral testimony (including by cross-examination of
5 the other party's declarant(s) or deponent(s)) shall be filed and
6 served (with chambers copies provided) no later than **14** calendar
7 days before the Date and Time of Trial and shall include the names
8 of the witnesses, the subject of their expected testimony, and,
9 where applicable, a statement of the reasons why the testimony
10 cannot properly be introduced by declaration(s) or deposition
11 excerpt(s). Any opposition shall be filed and served (with
12 chambers copies provided) no later than **10** calendar days before
13 the Date and Time of Trial. The court will rule on the motion
14 without a hearing. No such motion is required for cross-
15 examination or redirect examination of expert witnesses.

16 Except on motions for relief from stay, declarations of non-
17 expert witnesses will not be considered except by stipulation of
18 the parties.

19 **PRE-TRIAL SUBMISSIONS.** Not later than **7** calendar days before
20 the Date and Time of Trial, each party shall:

21 (a) File and serve a trial brief, which shall include a
22 summary of the facts to be proven and the legal theories on which
23 the party relies. Briefs shall not exceed **15** pages without prior
24 permission of the court. The court will not normally request or
25 permit post-trial briefs.

26 (b) Except for motions for relief from stay, file and

1 serve a witness list, including a brief summary of the anticipated
2 testimony from each witness. If a party to the matter will be
3 called as a witness (even as an adverse witness) that party's name
4 must be included on the witness list. The presence of a witness'
5 name on the witness list is to alert the court and the other side
6 that the witness may be called. It does not mean that that person
7 will be called. Accordingly, each party is responsible for
8 ensuring the attendance of every witness the party intends to
9 call, whether or not named by the other side. Except in
10 exceptional circumstances, and absent consent by the other side, a
11 party will not be allowed to call a witness not named on that
12 party's witness list. This subparagraph shall not apply to expert
13 witnesses or their testimony.

14 (c) On motions for relief from stay, file and serve
15 (i) a notice identifying any declaration(s), deposition excerpt(s)
16 or memoranda previously filed in connection with the preliminary
17 hearing and (ii) any additional declarations the party wishes the
18 court to consider.

19 (d) File and serve a list of exhibits (other than those
20 to be used for impeachment or rebuttal) and exchange, but not
21 file, copies of all exhibits the party intends to introduce into
22 evidence. Any paper(s) in the court's file of which a party
23 intends the court to take judicial notice, or other facts that are
24 proper for judicial notice under Fed. R. Evid. 201, must be
25 reproduced and included as an exhibit(s). Copies of the
26 declarations filed and served in accordance with this order shall

1 be marked as exhibits in the manner described herein. All
2 exhibits are to be premarked for identification.

3 In adversary proceedings, Plaintiff's exhibits should be
4 marked by number and defendant's exhibits should be marked by
5 letter. On motions for relief from stay and other contested
6 matters initiated by motion, Moving Party's exhibits should be
7 marked by number and Respondent's, Debtor's or Trustee's exhibits
8 should be marked by letter. On objections to claim(s) and
9 objections to confirmation of plans, Creditor's exhibits should be
10 marked by number and Debtor's or Trustee's exhibits should be
11 marked by letter.

12 Each page of any exhibit that has more than one page is
13 to be numbered consecutively. The parties shall bring to Trial
14 copies of all exhibits for opposing counsel, the witnesses and the
15 court, together with an exhibit list. If a party has more than 10
16 exhibits, the exhibits should be placed in a three-ring binder
17 with a tab for each exhibit and the exhibit list placed at the
18 front of the binder.

19 **EXPERTS.** The presentation of expert testimony at Trial
20 shall be governed by the following:

21 (a) Direct evidence shall be presented by a declaration
22 that authenticates the report of the expert. See FRCP
23 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each party
24 shall file and serve declarations of experts and other documentary
25 evidence related thereto no later than 30 calendar days prior to
26 the Discovery Deadline; provided, however, on motions for relief

Trial Scheduling Order
Revised July, 2011

-6-

1 from stay, such declarations shall be filed and served no later
2 than **14** calendar days prior to the Date and Time of Trial.

3 (b) To cross-examine an opposing party's expert
4 declarant, a party shall notify the opposing party in writing or
5 by e-mail at least **3 court** days before the Date and Time of Trial,
6 in which case the declarant will be required to attend the Trial.
7 Any party who fails to notify the opposing party will not be
8 permitted to cross-examine the opposing party's expert. Any party
9 who requests the right to cross-examine an expert and then does
10 not do so will be expected to reimburse the opposing party no less
11 than the expenses incurred in producing the expert at the Trial.

12 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items
13 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must advise
14 the opposing party of any objections to the introduction of
15 testimony or exhibits. Parties must meet and confer before Trial
16 to attempt to reach agreement regarding admissibility. The court
17 expects the parties to make good faith efforts to resolve all
18 evidentiary issues.

19 **MOTIONS IN LIMINE.** If efforts to resolve disputes regarding
20 the introduction of testimony or exhibits are unsuccessful,
21 motions in limine should be filed and served no later than **4 court**
22 days before the Date and Time of Trial. Such motions should
23 include a certification that the moving party has complied in good
24 faith with the meet and confer requirements of the preceding
25 paragraph. Opposition should be filed and served no later than **1**
26 **court** day before the Date and Time of Trial.

1 Copies of motions and oppositions should be delivered or
2 faxed directly to Chambers. Motions in limine will be heard at
3 the commencement of Trial.

4 **STIPULATIONS.** At the commencement of Trial, the parties must
5 be prepared to stipulate into evidence all exhibits that are
6 admissible for at least one purpose. Bona-fide objections may be
7 reserved, with the issue of admissibility deferred until the
8 exhibit is offered into evidence.

9 **ORDER OF PRESENTATION AT TRIAL.** Unless otherwise agreed by
10 the parties or ordered by the court, Plaintiffs in adversary
11 proceedings, moving parties on motions for relief from stay, and
12 claimants on objections to claims will present their cases-in-
13 chief first. On objections to confirmation of plans, debtors or
14 other plan proponents will present their cases-in-chief first.

15 **IMPEACHMENT AND REBUTTAL WITNESSES.** The requirement of
16 advance identification of witnesses and production of exhibits
17 does not apply to witnesses and exhibits presented for purposes of
18 impeachment or rebuttal.¹ This paragraph supercedes the expert
19 disclosure procedure of FRCP 26(a)(2)(D)(ii), incorporated via
20 Fed. R. Bankr. P. 7026.

21 **NOTICE TO COURT.** No later than the Monday of the week prior
22

23 ¹ The proper function of rebuttal evidence is to contradict,
24 impeach or defuse the impact of the evidence offered by an adverse
25 party. Testimony offered only as additional support to an argument
26 made in a case in chief is improper on rebuttal. Peals v Terre
Haute Police Dept., 535 F.3d 621, 630 (7th Cir. 2008); see also Daly
v. Far Eastern Shipping Co., 238 F.Supp.2d 1231, 1238 (W.D. Wash.
2003), aff'd 108 Fed. Appx. 476 (9th Cir. 2004).

1 to the Date and Time of Trial, counsel for: Plaintiff (in an
2 adversary proceeding); Moving Party (on a motion for relief from
3 stay); and the Debtor or Trustee (on objections to claim or
4 objection to plan confirmation) **must** telephone or e-mail the
5 court's Calendar Clerk/Courtroom Deputy, Ms. Lorena Parada (415-
6 268-2323; Lorena_Parada@canb.uscourts.gov) and report: whether the
7 parties intend to go forward with the Trial as scheduled; if
8 settlement is likely; whether the time reserved for the Trial is
9 realistic; and any other relevant information.

10 **NON-COMPLIANCE.** Any failure of a party to comply timely with
11 this scheduling order may result in judgment against such party,
12 removal of the Trial from calendar, exclusion of evidence or
13 imposition of monetary or non-monetary sanctions. See FRCP
14 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

15 **DATE AND TIME OF TRIAL:** June 3, 2013, at 9:30 a.m.

16 **TIME RESERVED FOR TRIAL:** One Day

17 **DISCOVERY DEADLINE:** May 3, 2013

18 **OTHER PROVISIONS:** A status conference will be held on
19 February 22, 2013.
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21
22 ***END OF ORDER***
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COURT SERVICE LIST

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Trial Scheduling Order
Revised July, 2011

-10-